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Robert Westmoreland

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Contemporary liberalism celebrates itself as founded on a deep respect for the unique worth of persons. Though it does not assume any non-naturalistic conception of persons of the sort characteristic of the Judeo-Christian or Kantian traditions, neither does it typically claim to deny such conceptions; in fact liberalism professes a neutrality toward all non-harmful ways of life, including theistic religions, motivated by its respect for persons. I argue that in theory and practice an influential strand of contemporary liberalism both assumes a conception of persons which is Hobbesian in inspiration and manifests Hobbes' hostility toward religion.

Few discoveries are more irritating than those which expose the pedigree of ideas.—*Lord Acton*[1]

Contemporary liberalism often celebrates itself as founded on a recognition of the unique worth of persons. It does not assume the non-naturalistic view of persons of either Christianity or Kant, but it claims not to reject it either; it allows no judgments about the worth of various ways of life to affect the state's distribution of goods, but it claims not to be founded on the assumption that none is worthier than another; though it forbids the state to prefer one religion to another or religion to irreligion, it professes not to assume or promote a secular worldview. This essay questions these assumptions, and argues that a very influential strand of liberalism, one that typically claims to be as tolerant of theistic religions, including Christianity, as of any other way of life that does no injustice to others, is really Hobbesian in inspiration and hostile to religion, Christianity in particular. I do not try to set out a political theory or conception of justice that uniquely realizes Christian ideals as they apply to political life: there may well be no such theory, and if there is, it cannot be limned in a brief essay. Nor do I claim that all forms of liberalism share the tendencies I describe. I only float the hypothesis that a certain package of political commitments which I trust most would call liberal appears to constitute an intellectual system rather than an entirely contingent collection of discrete beliefs on the assumption that it manifests a particular way of looking at the world articulated first by Hobbes.

I. *Hobbesian Liberalism*

For Hobbes men are rational animals, but in a very different sense from Aristotle or St. Thomas. There is no final end for reason to apprehend; the "end" we seek is "felicity" or "*Continuall successe* in obtaining those things which a man from time to time desireth."[2] Judgments about what is good (as opposed to what is right) give voice only to subjective preferences. Free will is merely the capacity to act on one's desires unhindered by any outside force. Nevertheless reason bestows a character on human appetites very different from that of other animals. Other organisms reflexively pursue desires caused by objects of their immediate environment; men and women pursue objects entertained in imagination as well as those immediately present. Human appetite is thus peculiarly insatiable. Reason counsels the accumulation by each, for reasons of assurance, of goods beyond the needs of the moment and so invites competitive deadlock. More fundamentally, reason gives rise to consciousness of self, and so to the passion of pride. Each desires above all preeminence, and to be *recognized* as preeminent. His greatest joy "consisteth in comparing himselfe with other men," and he "can relish nothing but what is eminent."[3]

The passion of pride inevitably generates the fear of being outdone by others, for the race for precedence is necessarily a zero-sum game; unlike the competition for material goods, it cannot increase the availability of the good desired. In fact reason recognizes any hope of sustained preeminence as vainglorious, for superiority arouses envy and perpetual struggle which ends in the ultimate affront to pride, violent or shameful death at the hands of a competitor. Reason thus counsels the pursuit of peace even at the expense of precedence. The price of peace is the abandonment of the quest for victory and submission in common to a sovereign whose authority is absolute; though a product of the covenant, he is not party to it, since contractors have obligations (i.e., limits to their rightful power) and prior to the creation of the sovereign there is no morality, hence no obligation. Justice, the unfeigned endeavor for peace, is the highest virtue, and it amounts to obedience to the sovereign who through the law defines the terms of the pursuit of peace.

As justice is the highest moral virtue, and the other moral virtues are desirable only because they conduce to peace,[4] no more sense attaches to the notion of the good or noble life in the commonwealth than in the state of nature. Courage is a passion rather than a virtue[5], as is any other disposition which makes for the strong and definite characters that might threaten social peace. Unlike those passions such as fear which move men to seek peace, courage "enclineth men to private Revenges, and sometimes to endeavor the unsettling of the Publique Peace."[6] The morality of *Leviathan* is, in the words of Michael Oakeshott, "the morality of the tame man."[7] Men and women enter the commonwealth, not to seek virtue in the Aristotelian or Thomistic sense,

but to pursue a "commodious" life.[8] This is reflected in certain rights the citizen retains in the commonwealth. Though they do not impose correlative duties on anyone else—the sovereign has no duties, the duties of citizens are creations of the sovereign—they are rights in that their exercise does no injustice and individuals cannot be expected to forego them. Resistance to punishment—"Wounds, and Chayns, and Imprisonment,"[9] as well as capital punishment—is not unjust, nor is flight from the battlefield, regardless of the cause of war. The point of the commonwealth is "the procuration of the *safety of the people*," by which "is not meant a bare Preservation" but also "all other Contentments of life."[10] The commonwealth is not the terror state some critics think; as Frank Coleman argues in *Hobbes and America*, coercion (as opposed to the threat of coercion) represents the *failure* of the sovereign, since the natural right to resist imprisonment or death is retained in the commonwealth.[11]

A certain conception of equality attends this idea of the commonwealth. Claims of superiority are dangerous as well as empty, for they kindle the passion of pride, which the sovereign is called to crush. The sovereign is "compared to *Leviathan*, taking that comparison out of the last two verses of the one and the fortieth of *Job*; where God having set forth the great power of Leviathan, called him King of the *Proud*."[12] Differences between individuals are said to pale before their essential equality. Even the strongest can be killed by the weak, which shows the insignificance of differences in individual power. Hobbes is especially anxious to establish intellectual equality, for he thinks that men and women take greatest pride in the supposed superiority of their intelligence. Thus he argues that the contentment of each with his intellect evidences substantial equality (no doubt a disingenuous argument in light of his views about our tendency to vainglory).[13] An attitude of superiority invites strife. As individual differences pale before our common susceptibility to shameful death, we should consider each other equals.[14]

Hobbes' conception of the commodious life and of equality illuminates his view of then-nascent capitalism. He finds peaceable the middle class's desire to obtain the prerequisites of a commodious life "by their Industry."[15] He acknowledges the importance of the "Liberty to buy, sell, and otherwise contract with one another."[16] A person's "Labour also, is a commodity exchangeable for benefit, as well as any other thing."[17] Industry and frugality increase "the public stock, which cannot be too great for the public use."[18] In sum, the pursuit of modest self-enrichment within a legal framework created by the sovereign would seem to dissipate the acquisitive energies of the individual peaceably while incidentally enriching the commonwealth. It is acceptable on those grounds.

Hobbes would appear to be an apologist for the free market; yet he is also its mordant critic. Those who have enriched themselves "by craft and trade"

are so blind that they do not see that their real interest lies in obedience to the sovereign.[19] Though market society condemns sins of the flesh, it tolerates "the lucrative vices of men of trade or handicraft."[20] Friendship has no deeper basis than commercial value.[21] The notion that one's market price determines one's value, and that to value a man "at a low rate, is to *Dishonour* him,"[22] would seem an invitation to instability, for it threatens, not just poverty, but the acute pain of loss to one's competitors.

Accompanying this portrait of the commercial classes is a deep and general skepticism about grown or evolved institutions like the market. Hobbes' radical critique of the common law wholly rejects the idea that, in the words of Chief Justice Hale, "Long experience makes more discoveries touching conveniences or inconveniencies of laws than is possible for the wisest council of men at first to foresee."[23] There is no accumulated wisdom to be found in histories, which if anything sow discord; those who consult them for political guidance are like those who would say, because men always "lay the foundation of their houses on the sand," that it *ought* to be thus.[24] The constructivist method of contract is the only guide to a peaceful commonwealth. In general, social order is the product, not of custom and tradition embodied in social morality, markets, and the common law, but of central direction, despite the role of commerce in dissipating the otherwise violent energies of self-seeking individuals.

The institution which the sovereign must take most care to reign in for the sake of peace is the church. Hobbes is not the Promethean sort of atheist who believes that religion prevents the realization of autonomy. Rather religion inflames passions that threaten peace. The idea of God as anything but a bare first cause is the product of human desire.[25] The doctrine of salvation through faith gives rise to sectarian passions, and invites presumptions of superiority on the part of those who make claims of revelation. The solution of the religious problem is not to abolish the church but to domesticate it, to make sure it does not disturb the commodious life.[26]

The portrait of the Hobbesian man that has emerged above is of one who pursues his own good in his own way, resents those who appear superior in any way, and is chary of judging others for fear of exciting envy or resentment. Though he has not lost his competitive inclinations, he recognizes the need to subordinate them; he has made his peace with the idea that security, freedom, and release from the anguish of the race for precedence are goods outweighing glory. He is wholly without illusions: He sees through claims of superiority, and probably prefers the frivolous sensual man who is peaceable to the one of courage and passionate commitment to some ideal of life, whether Christian or Aristotelian. His tepid loyalty to the commonwealth springs from its ability to provide him with the facilities to pursue his own good in his own way. For him religion is only the product of passion; he

would rather it disappear, except to the extent that it counsels a sort of humility which at least resembles the peaceableness of the Hobbesian man, though again he lacks the Promethean drive to extirpate it.

II. *Contemporary Liberalism and Religion*

Few contemporary liberals call themselves Hobbesian, and most condemn Hobbes' attitude toward religion. They insist that the state treat the religious and non-religious alike with equal respect, which is far from the notion that religion is a social evil to be tolerated only so far as it conduces to social peace. Religious practice which does no immediate harm to identifiable individuals is said to deserve as much respect and protection as other non-harmful pursuits. Christians in particular are advised to embrace this political stance, for their faith demands a free response to grace, not a submission to a politically imposed religious orthodoxy. Liberalism claims to oppose Constantinianism, not religion.

I wonder. Perhaps the most economical way to make the point is to trace the career of a certain strain of liberalism through the judicial opinions of Justice William Brennan, lionized by many as the incarnation of liberal tolerance and neutrality.[27] In 1963 the Supreme Court in *Abington School District v. Schempp* ruled that no legislature "can pass laws which aid one religion, aid all religions, or prefer one religion to another."[28] If "the purpose and the primary effect of the enactment...is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power." A statute or policy is constitutional only if it has a secular purpose "and a primary effect that neither advances nor inhibits religion."[29] This test is certainly not hostile to religion. Ten years later, though, in *Committee for Public Education & Religious Liberty v. Nyquist*, the Court applied the test in a novel way when it overturned an amendment to New York's Education and Tax Laws authorizing state aid for maintenance and repair of private schools and for tuition supplements for poor private school students, though this aid was equally available to religious and non-religious schools. Since the amendment applied only to private schools, which in New York were mostly sectarian, and since a qualifying sectarian school might use the funds (e.g.) to repair the school chapel rather than for some purely secular purpose, such funding constitutes "direct aid"[30] to religion and so violates the *Schempp* test, even though advancement of the sectarian aim of the school may not be the *primary* effect of the aid. In an opinion joined by Justice Brennan, the Court tackled the question whether, since this aid did not discriminate against non-religious schools, and since the amendment would "enhance the opportunities of the poor to choose between public and non-public education," it would better be seen as an attempt to make the Free Exercise Clause more meaningful rather than to violate the Establishment Clause. The Court answers that "In its

attempt to enhance the opportunities of the poor to choose between public and nonpublic education the State has taken a step which can only be regarded as one 'advancing' religion."[31] Funding of all schools equally, public and private, sectarian and non-sectarian, is construed as an unconstitutional advancement of religion. Justice Brennan's dissent in *Mueller v. Allen*[32] ten years later confirms him in this view. In *Mueller* the Court upheld a Minnesota statute allowing income tax deductions for the cost of tuition, supplies, and transportation of pre-college students. The Court held that such assistance was neutral since (unlike the aid ruled unconstitutional in *Nyquist*) it was available to the parents of public as well as private school students, and since state tax law permitted deductions for a variety of expenses. The financial benefit to religious schools was judged too attenuated to raise serious Establishment Clause issues. Justice Brennan dissented, claiming of course violation of the Establishment Clause.

In *Lemon v. Kurtzman* (Justice Brennan concurring), the Court struck down state statutes providing for reimbursement for the cost of teachers' salaries and instructional materials "in specified secular subjects."[33] There was no evidence that any of these were diverted to courses having a religious orientation; by the test of *Schempp*, such aid does not violate the Establishment Clause. Nevertheless the court ruled that such funding of sectarian schools was potentially divisive enough to threaten "the normal political process" and to "confuse and obscure other issues of great urgency."[34] Justice Brennan advanced this *Lemon* principle in his majority opinions in *Grand Rapids v. Ball*[35] and *Aguilar v. Felton*.[36] *Ball* raised the issue of state funding of remedial classes in secular subjects taught by public school teachers for poor parochial school students. Justice Brennan argued that this funding impermissibly advanced religion, despite its obviously secular intent, on the ground that it might indirectly advance religion by enhancing the diversity and so the attractiveness of parochial school curricula, that the teachers might surreptitiously incorporate religious themes in these classes, and that their very presence at such schools might be seen, justifiably or not, as state favoritism toward religion.

In *Aguilar*, the Court overturned a New York City remedial program only about ten per cent of whose beneficiaries were parochial school students. The program sent public school teachers to parochial schools in order to prevent the expense and logistical problems involved in shuttling the students to public schools during the school day. The state monitored the classes for religious content. It found none, which would seem to allay an important fear expressed in *Ball*. Yet the very supervision provided on Establishment Clause grounds was said by Brennan in his majority opinion to constitute an excessive entanglement of church and state. How could supervision intended to keep the wall of separation high advance religion? It couldn't; so Brennan,

undeterred by the parochial schools' support of the program, argued they should be spared the intrusion of state personnel required to monitor the classes for excursions into religion.

Though there are other examples of Justice Brennan's determination to raise the wall of separation high, these suffice to illustrate remarkable aspects of an interpretation of the First Amendment much admired by many liberals. Subsidizing students with no regard to whether they attend public or private, religious or non-religious schools is considered, if not actual state promotion of religion, resembling such closely enough to threaten social peace. It is interesting to juxtapose this view with two other prevalent liberal positions. The first is that, though state subsidies for, say, Serrano's *Piss Christ* might smack of promotion of anti-Christian views, free expression considerations dictate that, so long as the state chooses to subsidize artists, such work should bear no disadvantage in the competition for funds. A similar principle demands that the state increase the worth of various rights deemed fundamental by subsidizing the right whenever possible. Thus the state should pay for even non-therapeutic abortions for poor women. But it must not subsidize education in religious schools even indirectly, and even if the programs subsidized are rigorously secular.

The issue of abortion funding bears on the desire to marginalize religion in a more direct way. The American Civil Liberties Union, often pointed to as a group that lives the highest ideals of liberalism, fought the Hyde Amendment, whose purpose was to limit sharply federal funding, on the grounds that it served no secular purpose. Even though there is no inconsistency between atheism and opposition to either permissive abortion laws or state subsidies for abortion, the ACLU felt, given the Catholic orientation of many pro-life individuals and groups, that the Amendment constituted an unwarranted intrusion of religion into the political realm. Any prohibition of abortion funding was said to violate the Establishment Clause.[37]

It is hard not to conclude that the operative principle distinguishing religion from "fundamental" rights like abortion is that religion is a product of fantasy which inflames passions unconducive to the commodious life, and which thus should be reduced to as marginal a status as is feasible. Religious activity is to be tolerated only so far as it does not enter into political life in a divisive way. In effect this means that, though the church is relatively free, the state must do nothing that could be construed as advancing religion even incidentally, and should be especially vigilant not even to appear to lend support to religious education. The Supreme Court made the point well when in *Tilton v. Richardson* it justified state aid to religious colleges, despite its decisions about aid to religious primary and secondary schools, on the ground that "College students are less impressionable to religious doctrine" and that the college curricula "tend to limit the opportunities for sectarian influence."[38]

In other words, state aid that benefits religiously oriented schools is justifiable only so far as religious instruction in these schools is unlikely to take. This view of religious education as making "impressions" and exerting "influence" primarily on those with immature critical faculties is by all appearances an emotivist one, firmly in the Hobbesian tradition.

III. *Rawlsian Liberalism*

Even if the attitude toward religion just sketched is Hobbesian, it does not follow that mainstream liberalism endorses it. No doubt a consistent liberal political theory could reject this relationship between church and state. But I think many other aspects of the thought and practice of left-of-center liberalism in particular resembles Hobbes enough to suggest that Brennan's approach to religion is an organic part of a worldview that is in its essentials Hobbesian.

John Rawls' liberal theory of justice is I think a distillation of this worldview. This claim might seem false, despite the terse, Hobbesian tone of Rawls' "Justice as Fairness,"[39] in light of Rawls' conception of individual rights as imposing obligations on the state; his claim (in *A Theory of Justice*, if not in his later work) that those rights spring from a Kantian conception of persons, at least compatible with Judeo-Christian tradition, on which "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override,"[40] an inviolability based on a conception of the moral powers of persons inconsistent with Hobbes' psychological egoism; an attendant ideal of a society of free and equal persons each of whom agrees to share the fate of the others; the claim that among the basic liberties given lexical priority is liberty of religious thought and practice; his efforts to free liberalism of dependence on any particular metaphysics; and the fact that, unlike the Hobbesian contract situation, which does not presuppose conditions of fairness or equality, the point of the original position is to free us from heteronomous influences liable to cloud our vision of justice.

A closer look tells a different story. The claim about the Kantian conception of persons as inviolable sits uneasily with fundamental aspects of Rawls' theory even as articulated in *A Theory of Justice*. What Rawls offers there is not the Kantian view that persons can exercise contra-causal freedom to do right in the face of desire, but rather a "procedural rendering of...[Kantian] autonomy" wholly detached from its objectionable "metaphysical surroundings."[41] Rawls claims that he means to free liberal justice from *any* particular metaphysics rather than just Kantian dualism. But in *A Theory of Justice* he asserts rather than argues—as a matter of course, I take it, for all grown-up liberals—that one's willingness to develop his natural assets by the sweat of his brow as well as his possession of those assets are purely the product of

a conjunction of fortunate personal and social circumstances, such that distribution of goods by the state cannot be governed by desert.[42] Now Kant, who believes that self-control and disciplined effort are only morally admirable if done for the sake of duty, might agree that this sort of effort does not typically merit *esteem*. But nowhere does Rawls show any inclination to entertain the possibility of contra-causal freedom, which for Kant is a *sine qua non* of the sort of dutiful action which Kant thinks *does* deserve esteem; this, along with his claim in "The Basic Structure as Subject" that Kantian ethics must be restated in *empiricist* terms[43] suggests that *every* human action results from the social and natural lottery (and that Rawls' claim of metaphysical neutrality is false). Rawls tries to salvage the notion of moral worth, which he defines "as having a sense of justice."[44] But moral worth for Kant depends on freedom in the strong contra-causal sense, and Rawls' conception of persons is shorn of the "objectionable" metaphysical surroundings which make sense of such freedom. Rawls' notion of moral worth would seem to have only a pragmatic sense; "esteem" could only be a utilitarian-type device added to the social environment to induce us to act in accordance with the principles of justice. His view that moral worth has "*no* role in the substantive definition of distributive shares"[455] of primary goods fuels this suspicion, as do his recent writings about pluralism and about the difference principle, to which I now turn.

That the auspices of Rawlsian justice are more Hobbesian than Kantian, and have no reference to dignity or inviolability, is confirmed by some of Rawls' recent work. Apparently moved by criticisms about metaphysical assumptions built into *A Theory of Justice*, Rawls has argued lately that our current predicament constrains political theory to pursue agreement on the principles of justice based on "political justifications," defined as justifications that rely on no controversial moral or metaphysical principles. The predicament that demands this kind of justification consists in the radical pluralism of our moral and political culture, which pluralism is permanent, and which only an oppressive state could eliminate.[46] The solution of the predicament depends, as Jean Hampton says, on the hope that "there are numerous possibilities for gain which everyone desires to realize and which can only come about when a well-organized and, in particular, stable system of social cooperation is established."[47]

These possibilities are realized by means of "political" justifications of principles of justice. The idea of a fair decision procedure, of persons as equals, and the expression of their equality through the distribution of goods prescribed by the two principles of justice, are means to a stable social order that does not depend on an oppressive state. The veil of ignorance no longer relies on the allegedly individualistic, Kantian notion of persons built into *A Theory of Justice*. From the new Rawlsian perspective the veil is a device for

finding principles which will allow diverse individuals and groups to live together peacefully.

The revised Rawlsian project begins to sound much more like a Hobbesian *modus vivendi* than a political expression of individual dignity. Yet Rawls insists on an "overlapping consensus" in which citizens regard the principles of justice as right and not just instrumentally good, though of course the moral theories from which they derive the principles will vary greatly. The "essential elements of the political conception, its principles, standards and ideals, are theorems, as it were, at which the comprehensive doctrines in the consensus interact or converge."[48] The task of political philosophy is to show that the principles of justice derive severally from each comprehensive moral theory abroad in society, while itself staying neutral among those theories. If it works, the new improved political philosophy can achieve the peace the old brands aspired to without the pain of moral or metaphysical commitment.

The project of overlapping consensus depends on a general commitment to canons of reasonableness in political discussion and a principle of tolerance for divergent moral views which are themselves part of the consensus[49]; without it, the task of uncovering principles of justice which may be only latent in the various moral conceptions is hopeless. That no such commitment exists is obvious; just for instance, plenty of aging New Leftists are really (for instance) Marcuseans who long for social and political circumstances conducive to putting an end to "repressive tolerance." The disinclination to apply sanctions to those like the Northwestern professor who in 1986 disrupted contra leader Adolfo Calero's speech and virtually threatened his life, and who was later recommended for tenure by the English Department, suggests that those who are intolerant on principle reside, not just on survivalist ranches, but in places of prestige and influence where they elicit much sympathy. Assuming the views of at least some such people constitute *moral* conceptions—and Rawls had better not solve his problem by automatically excluding such views from the realm of the moral, given his description of the pluralist predicament that is the very inspiration of the new political philosophy—what does that philosophy say to them?

It cannot tease the principle of tolerance out of them by means of *ad hominem* appeals to their own moralities, for the point is that those moralities *reject* tolerance. Nor can it hope to sway them with Kantian arguments about respect for persons, since the new philosophy eschews controversy. The remaining alternative is to convince them that the alternative to tolerance is an oppressive state, and that they would likely be among the oppressed rather than the oppressors, since they have little political power. This of course is the sort of purely pragmatic argument that Rawls says cannot found an overlapping consensus.

But suppose for the moment that there *were* an overlapping consensus about

tolerance. Can the *political* justification (in Rawls' sense) of tolerance, or of whatever principles of justice emerge from public debate, be any different from the one addressed to the New Leftist? No. That justification can assume no particular moral conception. And it cannot simultaneously embrace the incommensurable principles of all the conceptions current in society; it would then be a cacophony that would fail the tests of reasonableness of discussion. The only justification left is the Hobbesian one: Let's tolerate each other's views, for the alternative is liable to be nasty, brutish and short for each of us. Now some might still deny that this is a Hobbesian argument, since it seeks an alternative to coercive order. But in light of the notion implicit in Hobbes that coercion represents the *failure* of the sovereign rather than his principle means of achieving it, even this weak attempt to put some distance between Rawls and Hobbes is suspect.

Another problem for Rawls is this. Even if we achieve overlapping consensus on the principles of justice, those principles are highly abstract and hardly apply themselves. The First Amendment rights concerning religion are presently interpreted in ways ranging from Brennan's to the view that those rights only forbid preference of one particular religion over another: the Equal Protection Clause of the Fourteenth Amendment is taken by some to support a right to abortion, by others to forbid it; something like Rawls' difference principle is invoked by classical liberals like Hayek and by ambitious redistributionists.

There are many similar examples which show that the overlapping consensus, if it exists at all, amounts only to an extremely indeterminate commitment not (for whatever reasons) to do anyone down. Political authorities will have to do the hard work of deciding what the principles of justice require in concrete cases. One approach to this situation is to say, as Ronald Dworkin says about hard cases at law, that there is a right answer to each hard case, from highly abstract cases like how to apply the difference principle, to the design of a constitutional system, to more concrete cases about how to interpret the Bill of Rights. Finding that answer is a matter of interpreting the principle in question—say, the difference principle—in a way that puts our political tradition in its best light.[50] But this route is not open to Rawls, since interpretation for Dworkin is a matter of substance as well as fit: the right answer is best in the *moral* sense, and requires the interpreter to employ highly controversial principles of political morality.

The only other way to interpret and apply the public conception of justice that is the object of the overlapping consensus is to make the interpretation purely conventional: apply it only when there is genuine consensus about its application. But, as suggested by the examples just cited, in a pluralistic society such agreement is rare, and is liable to be so abstract as to be useless.

What to do? Stop politics? Certainly not. The alternative seized, at least at

the level of constitutional law, by Dworkin, David A. J. Richards, and many other Rawls enthusiasts, seems to be the Hobbesian one: decide these questions in ways that bypass the electoral process. In other words, let the courts and those federal agencies which are substantially independent of the electoral process decide. Then tell dissenters that, though of course reasonable men and women might disagree about these decisions, *someone* must decide questions of fundamental rights and duties, and that person or body should be immune to those majoritarian pressures which incline politicians to discriminate against those whose ways of life are disapproved by the majority. This seems the Hobbesian alternative because it appears to give virtually unlimited discretion to individuals insulated in large degree from the electoral process, i.e., from those whose lives they affect. Now this claim will be contested in several ways. It will be said first that *interpreting* the law in order to *find* the right answer in hard cases, which is what Dworkin's ideal judge Hercules supposedly does, is much different from *making* the law, which Hobbes' sovereign inevitably does. But Dworkinian interpretation is no different from legislation; as I argue elsewhere,[51] neither the legal corpus as a whole (including the intent of its various authors) nor popular morality nor even the allegedly canonical language of the law limits Hercules, who can find substantive rights to abortion in the Due Process Clause of the Fourteenth Amendment and even rights against capital punishment in a document which explicitly presupposes the death penalty. So my claim that Dworkinian "interpretation" of alleged principles of overlapping consensus is really legislation stands so far.

But it will be objected that what aggressive non-elective judicial liberals like Dworkin and Richards want is the enforcement of individual rights, understood as trumps against collective goals for the protection of individuals who might otherwise be treated as inferior by a majority which disapproves of their way of life. These rights are meant to protect individual autonomy, hardly a Hobbesian ideal. This objection is unconvincing. For "civil rights" were originally conceived as protections of individual liberty against the state; the *central* government shall *not* enforce religion or irreligion; it shall *not* perform arbitrary searches and seizures; it shall *not* pass bills of attainder; the enumeration of the negative rights enshrined in the Bill of Rights shall *not* be construed to disparage those not enumerated.... This reflects an emphasis on negative rights as opposed to the sort of rights emphasized by contemporary liberals, i.e., positive rights which give the state great discretion to abridge individual liberty in order to confer various benefits on designated individuals and groups. The Framers' emphasis on negative rights reflects their great distrust of central power. Civil rights were *liberties*, *civil* liberties, liberties the *central government* could not abridge. Though the Bill of Rights disallows *congressional* infringement on these rights, this was be-

cause they designed Congress to be the strongest branch of the federal government.[52] The Supreme Court was to have nothing like the power it does today, as is evidenced by the fact that it took *Marbury v. Madison* to establish the principle of judicial review. One reason for the modest role envisioned for the Court was the belief that a powerful judiciary was a great threat to civil liberty.[53]

Contrast this conception of civil and constitutional rights with that of Dworkin *et al.* A fundamental political right is defined by Dworkin as a right not to liberty, but to "treatment as an equal,"[54] which amounts to the right not to have the distribution of goods, to the extent that that distribution is influenced by the state, affected by judgments about what ways of life are or are not worthy. (All primary goods are subject to redistribution.) We have a right to freedom of religion *not* because religion is (or can be) particularly noble—that would be perfectionistic—but because we are said to know from our general knowledge of society that these freedoms are likely to be abridged on perfectionistic grounds if at all. The right is not meant to facilitate the pursuit of a worthy life, but to ensure that no one is disadvantaged in the distribution of primary goods by adverse judgments about the worth of his or her way of life.

This conception of rights is most consistent with the anti-perfectionism of the liberalism I am examining, and illustrates the character of an influential kind of contemporary liberal jurisprudence: It virtually trivializes the role of freedom in the interpretation of constitutional rights, and is thus in the spirit of Hobbes' view that with very few exceptions liberties "depend on the silence of the law."[55] No case *at all* could be made that extensive infringements of liberty like school busing, or very ambitious redistributive and economic planning schemes, violate the rights of those constrained by them, so long as such can be construed not to express contempt for those whose liberties are infringed. The right to treatment as an equal is at least as likely (e.g.) to force the state to distribute food stamps to households of non-related individuals as well as more-or-less traditional families,[56] which extends the positive duties of others, as to protect a liberty. This right seems entirely compatible with Laurence Tribe's view that constitutional rights, once understood (by the Framers, for instance) as guarantees of liberties, will one day be read by the courts to incorporate a doctrine of rights to "affirmative governmental protection"—i.e., provision of—the means to "physical survival and security, health and housing, work and schooling."[57]

Now certainly Christian ethics demands (as did many *classical* liberals) that we have special concern for those who cannot support themselves. But it is important to bear in mind the context of the contemporary liberal drive for positive rights. Rawls' difference principle, which allows only those social and economic inequalities in the basic structure of society that benefit the

least advantaged, does not simply require us to provide a decent minimum for those who cannot help themselves. The least advantaged here are not necessarily poor in an absolute sense; Rawls' is an "ideal theory," and he envisions the difference principle governing the "well-ordered" society where being disadvantaged is a purely relative state. Yet the Rawlsian state has enormous discretion to limit individual liberty in the name of this principle, which undermines the repeated claim that liberal justice is concerned above all about individual autonomy. The suspicion that the conception of persons at work here sees them as patients who need to be taken care of by a vastly powerful state is fueled by the fact, discussed earlier, that Rawls rejects Kant's conception of persons in favor of the claim that all we do is a product of genetic, economic, and social forces. It is this conception which allows Rawls to treat all economic goods as if they were manna from heaven (in Nozick's well-known phrase), subject to distribution by the state, rather than as things produced by *agents* who might have *some* prior claims of desert.[58] Now Rawls in fact has some sympathy for free markets, as Hobbes did, but of a purely instrumental sort;[59] rights to wealth or income or investment are wholly a function of their ability to enhance the prospects of the worst-off in accordance with the difference principle. As J. R. Lucas points out, those who accomplish much in ways that benefit everyone are entitled in Rawlsian society to more than the worst off only on the assumption that they are too selfish to produce as much without the incentives the difference principle gives them. Were they selfless they would end up with no more primary goods than the worst off.[60] The better off must be manipulated to provide a commodious life for the others.

Rawls' views about self-respect heighten the suspicion that those taken care of by the provider state are not really agents, and so that autonomy really has no place in his liberalism. Self-respect in Kant's sense can only be *earned*.[61] Not so in Rawls' system. He calls self-respect "perhaps the most important primary good," for without it one will feel that his or her life plans are worth little, and will not "take delight in their execution."[62] The liberal state provides a basis for self-respect by publicly expressing our respect for all. It does this by arranging the distribution of primary goods in accordance with the two principles of justice. It thus "insure[s persons] a sense of their own value."[63] Now those principles assume that nobody really *earns* or *deserves* anything, including good character or any of the primary goods, and that from the perspective of politics no life plan is superior to any other. Self-respect is entirely unmerited. This "no-fault"[64] conception of self-respect, as Clifford Orwin calls it, assumes the sort of passive conception of persons that sits much more comfortably with Hobbes than with the Christian or Kantian traditions.

This conception of self respect has still more distinctively Hobbesian over-

tones. For Rawls, one's self-esteem is threatened, even if one is reasonably well off, if the idea is abroad that the better off earned their advantages; that follows from the claim that self-respect is "insured" by distribution in accordance with principles that recognize no deserved inequalities. Now why should that be? What must persons be like for them to respond this way to (apparently) merited inequalities? It must hurt them to see others achieve eminence which does not redound to their benefit. This sounds like the sort of resentment that Leviathan is called upon to quench. Rawls tries hard to demonstrate that his principles of justice are not expressions of envy. But I see no other explanation of why one cannot "take delight" in his way of life and have a sense of self-worth unless one is sure that whatever inequalities in primary goods the better-off enjoy increase one's own stock of goods. This seems to be an expression of a desire simply to cut the proud down to size, 'the proud' referring here not just to predatory, selfish types who do the weak down, but to anyone whom one fears might have bettered one in any way. While an extremely powerful central government is an important part of Hobbes' vision of political society, it is the idea that what we dread most is losing the race for precedence that is the truly distinguishing mark of Hobbes' political philosophy. I fear it marks Rawls', too; in Rawls' well-ordered society, we can take satisfaction in knowing that the eminent occupy that station at our sufferance.

But mightn't the principles of justice, especially the difference principle, realize in political life Christian humility and charity rather than Hobbesian resentment? The point of the theory of justice is that we agree to share one another's fate, and that the status of the better off is not indicative of superior personal worth.

There is surely no room for this claim in the later Rawls, whose public conception of justice is a Hobbesian *modus vivendi*. I think it is inconsistent with the *Theory of Justice* Rawls as well. Christian humility enjoins us not to be haughty about whatever gifts we have, and to have special concern for the poor. But it is a caricature of this ideal of humility to say with Rawls that others can demand as a matter of right that all systematic inequalities be justified solely in the terms just discussed. Refusal to recognize publicly differences in merit is not humility, but vainglory.

There is another feature of Rawlsian liberalism, implicit in the discussion of the difference principle and of the new liberal jurisprudence, which is strikingly like Hobbes. I have already mentioned that Rawls' case for free markets is purely instrumental. So is his regard for other more-or-less spontaneous institutions intermediate between the individual and the state. The clearest example of this is his attitude toward the family. Rawls sees that his doctrine of fair equality of opportunity, which requires that social and economic circumstances be manipulated to maximize the prospects of the worse-

off, seems inconsistent with the family. In a well-known passage he simply asserts that, though "the idea of equal opportunity inclines in this direction [the abolition of the family]...within the context of the theory of justice as a whole"[65] it is not urgent that the family be abolished. There is no argument for this reprieve. This is a very shaky defense of the family, but, given his various background assumptions about the nature of persons and the role of the state, Rawls can do no better. In this respect he resembles Hobbes, who does not demand the abolition of intermediate institutions, but who leaves them at the mercy of Leviathan nonetheless.

IV. *Conclusion*

I have argued that at the level of concrete political decisions such as Supreme Court cases, and at the level of abstract political theory, a powerful movement within contemporary liberalism is essentially Hobbesian; it evidences a hostility to religion and a conception of persons similar to Hobbes'. I want to close this essay by denying one point of resemblance between Hobbes and liberals of this type. I believe that Hobbes dissembles when he uses traditional moral language, most notably about natural rights, in a radically new way to justify Leviathan. I do not think this is intended by most liberals. Rather I think their fundamental philosophical presuppositions about persons and the world around them are inconsistent with moral ideals to which they have a deep sentimental attachment. The moral ideals they profess are cut flowers that cannot survive outside their native soil, which was nourished by the fusion of the Christian and classical traditions. The death of these ideals is becoming more apparent. Christians have cause to wonder whether a society governed by the new liberalism can be hospitable to their beliefs.

University of Mississippi

NOTES

1. Lord Acton, quoted in F. A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1972), p. 1.

2. Thomas Hobbes, *Leviathan* (London: Penguin Classics, 1985), p. 129.

3. *Ibid.*, 226.

4. See *ibid.*, p. 216.

5. See *ibid.*, p. 123.

6. *Ibid.*, p. 717. Granted, Hobbes says that courage and the like are not flatly incompatible with the peaceful virtues; but he says as well that the problems with reconciling the two types of dispositions, though "not Impossibilities," are "indeed great difficulties" which are overcome only in rare individuals such as Sidney Godolphin, who have a *desirable* sort of pride (p. 718). A theory of the state cannot assume the existence of such

rare material with which to work. For a discussion of this aspect of Hobbes, see Michael Oakeshott, *Rationalism in Politics* (New York: Metheun, 1967), pp. 290-93.

7. Oakeshott, *Rationalism in Politics*, p. 289.

8. Hobbes, *Leviathan*, p. 188.

9. *Ibid.*, p. 192.

10. *Ibid.*, p. 376.

11. Frank M. Coleman, *Hobbes and America: Exploring the Constitutional Foundations* (Toronto: University of Toronto Press, 1977), p. 89.

12. Hobbes, *Leviathan*, p. 362.

13. *Ibid.*, pp. 183-84.

14. *Ibid.*, pp. 210-11.

15. *Ibid.*, p. 188.

16. *Ibid.*, p. 264.

17. *Ibid.*, p. 295.

18. Hobbes, *Behemoth*, quoted in Leo Strauss, *The Political Philosophy of Hobbes*, trans. Elsa Sinclair (Chicago: University of Chicago Press, 1966), p. 120.

19. Hobbes, *Behemoth*, quoted in Strauss, *Hobbes*, p. 118.

20. Hobbes, *Behemoth*, quoted in Coleman, *Hobbes and America*, p. 66.

21. Hobbes, *De Cive*, quoted in Coleman, *ibid.*

22. Hobbes, *Leviathan*, pp. 151-52.

23. "Sir Matthew Hale's Criticism on Hobbes Dialogue on the Common Law," quoted in F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), p. 433, n. 20.

24. Hobbes, *Leviathan*, p. 261.

25. *Ibid.*, pp. 167-68.

26. *Ibid.*, ch. XLII.

27. For a sympathetic account of the trend in adjudication discussed in this section see Christopher Mooney, *Public Virtue: Law and the Social Character of Religion* (Notre Dame: University of Notre Dame Press, 1986).

28. 374 U.S. 203, 216 (1963).

29. 374 U.S. 203, 222.

30. 413 U.S. 756, 775 (1973).

31. 413 U.S. 756, 788.

32. 463 U.S. 388 (1983).

33. 403 U.S. 602, 607 (1971).

34. 403 U.S. 602, 622-623.

35. 473 U.S. 373 (1985).

36. 473 U.S. 402 (1985).

37. See Joseph Sobran, *Single Issues* (New York: The Human Life Press, 1983), pp. 147-48.

38. 403 U.S. 672 (1971).

39. "Justice as Fairness," *The Philosophical Review* 67 (1958), pp. 164-94.

40. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 3.

41. *Ibid.*, p. 264.

42. See *ibid.*, p. 104.

43. John Rawls, "The Basic Structure as Subject," *American Philosophical Quarterly* 14 (1977), p. 165.

44. Rawls, *A Theory of Justice*, pp. 312-13.

45. *Ibid.*, p. 313, emphasis added.

46. John Rawls, "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7 (1987), p. 22.

47. Jean Hampton, "Should Political Philosophy Be Done without Metaphysics?" *Ethics* 99 (1989), p. 796.

48. Rawls, "Overlapping Consensus," p. 9.

49. See *ibid.*, pp. 8, 17. Hampton is right (p. 802) that the key to the new Rawlsian project is the principle of tolerance.

50. See, e.g., Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), ch. 4, pp. 81-130. Dworkin applies this interpretive method to court decisions, but there is no reason to limit it only to that kind of political decision.

51. "Dworkin and Legal Pragmatism," forthcoming, *Oxford Journal of Legal Studies* 11 (1991), pp. 174-92.

52. See George W. Carey, *The Federalist: Design for a Constitutional Republic* (Champaign: University of Illinois Press, 1990).

53. See, e.g., Philip B. Kurland, *Politics, the Constitution and the Warren Court* (Chicago: University of Chicago Press, 1970), pp. 56-57, for Thomas Jefferson's condemnation of an aggressive judiciary.

54. See Dworkin, *Taking Rights Seriously*, p. 273.

55. Hobbes, *Leviathan*, p. 271.

56. *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973).

57. Laurence Tribe, *American Constitutional Law* (Mineola: Foundation Press, 1978), p. 574.

58. It might be objected that, though the Rawls of *A Theory of Justice* may have been committed to an extremely deterministic view of persons, the "Overlapping Consensus" Rawls is not, since he allegedly eschews all metaphysics. But the principles of justice of the two Rawlses are the same, and those principles treat primary goods—all goods, for that matter—as manna from heaven. This treatment of goods is at least biased toward a deterministic, naturalistic conception of persons.

59. Rawls, *A Theory of Justice*, p. 280. It might be argued that a fusion of Christianity and a political theory that prizes free markets for their conduciveness to personal autonomy rather than on Rawlsian grounds is implausible in light of, say, *Acts* 4:32-35, where life in the early church is described as communal and egalitarian. But this was a purely

voluntary community united in the pursuit of a very particular conception of the good. In both these respects the basis of its communitarianism differs radically from Rawls'.

60. See J. R. Lucas, *On Justice* (Oxford: Clarendon Press, 1980), p. 189.

61. See Immanuel Kant, *Lectures on Ethics*, trans. Louis Infield (London: Metheun, 1930).

62. Rawls, *A Theory of Justice*, p. 440.

63. *Ibid.*, p. 179.

64. Clifford Orwin, "Welfare and the New Dignity," *The Public Interest*, 71 (1983), p. 93.

65. Rawls, *A Theory of Justice*, p. 511.